



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF SIKA v. SLOVAKIA (No. 3)

(Application no. 26840/02)

JUDGMENT

STRASBOURG

23 October 2007

FINAL

23/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sika v. Slovakia (No. 3),

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 2 October 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 26840/02) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovak national, Mr Vladimír Sika (“the applicant”), on 7 July 2002.

2. The Slovak Government (“the Government”) were represented by their Agent, Ms A. Poláčková, who was subsequently succeeded in that function by Ms M. Pirošíková.

3. On 7 July 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1937 and lives in Trnava.

A. Underlying facts and contact with administrative authorities

5. The applicant's family owned real estate to which the applicant now has the title. It is located in the municipality of Drietomá.

6. In 1957 a road was built near the property to provide access to a neighbour's property. In 1986 the road was modified.

7. After the road had been built, changes were made to the Land Registry maps and records in order to designate the road as a separate plot under a separate number and with a separate ownership regime.

8. Since then the applicant has turned numerous times to the municipal authorities in Drietomá and to all levels of the Land Registry authorities. He claimed that the road had been constructed without the requisite permits; that it served solely the interests of his neighbour, which was unjust; and that it was partly located on his land without valid title, in violation of his property rights. The applicant requested, unsuccessfully, that the legal position be complied with both in the Land Registry records and in reality; that the road be removed; and that he be paid damages.

9. In a letter of 8 June 1995 the supreme Land Registry body (*Úrad geodézie, kartografie a katastra*) informed the applicant that his problem could not be solved through the administrative procedure aimed at “restoring original legal borders” (*obnovenie hraníc pôvodného právneho stavu*) as this procedure only applied to uncontested situations. It was understood that in the applicant's case there was a dispute concerning the border between his property and the road. Such a dispute could only be resolved by a court and the applicant was advised to assert his claims there.

10. In letters of 9 October and 6 November 1997 the Trenčín district office (*Okresný úrad*) informed the applicant that the Land Registry had no power to change boundaries of plots and that, in so far as the applicant was seeking such changes, he should bring his claims to the courts.

11. In a letter of 15 December 1997 the Trenčín regional office (*Krajský úrad*) informed the applicant that the current Land Registry maps and records in respect of his property had been drawn up and defined in the 1960s and were considered completed. On 1 January 1998 an amendment to the relevant legislation, the Land Registration Act (Law no. 162/1995 Coll.), would enter into force, and would provide for a new administrative procedure aimed at “determination of boundaries” (*určenie priebehu hranice*). If the applicant believed that the existing Land Registry maps and records interfered with his property rights, from 1 January 1998 he could seek protection of such rights through this procedure.

B. The 1998 Action

12. On 14 January 1998 the applicant brought an action against the district office and the Drietomá municipal office (*Obecný úrad*) in the Trenčín District Court (*Okresný súd*). He sought a judicial order against the district office, which was in charge of the relevant Land Registry records, requesting it to rectify these records by bringing them into line with his ownership claim.

13. On 22 January 1998 the District Court instructed the applicant to provide further and better particulars and advised him that, pursuant to sections 48 to 51 of the amended Land Registration Act, since 1 January 1998 boundary disputes fell within the jurisdiction of Land Registry authorities.

14. On 17 February 1998 the District Court discontinued the proceedings, observing that at that time land boundary disputes fell to be determined at first instance by district offices in their function as Land Registry authorities. The District Court consequently referred the matter to the Trenčín district office.

15. On 2 April 2001 the district office sent the matter back to the District Court, holding that it fell within the jurisdiction of the ordinary courts since it concerned protection and restoration of rights in respect of real property. On 26 April 2001 the Supreme Court (*Najvyšší súd*) upheld this view.

16. The District Court subsequently re-registered the action under a new file number.

17. On 17 September 2001 the District Court requested the applicant to pay the court fees. Subsequently, on 5 and 16 October 2001 and 31 January 2002, the applicant repeatedly requested an exemption from the obligation to pay the court fees. The request was dismissed as unfounded and the dismissal was upheld on appeal.

18. On 24 June 2002 the District Court discontinued the proceedings on the ground that the applicant had failed to pay the court fees. On 4 October 2003 the District Court corrected the decision by adding a proviso to its operative part to the effect that the decision would be rescinded if the fee was paid within the period allowed for an appeal against that decision. On 22 October 2003 the District Court corrected clerical errors in the operative part of the decision. The applicant appealed.

19. On 23 March 2004 the Trenčín Regional Court (*Krajský súd*) upheld the decision to discontinue the proceedings and it thus became final.

C. The 2000 Action

20. On 26 October 2000 the applicant brought a fresh action against the Trenčín district office and the Drietomá municipal office in the District Court. He argued that after his 1998 action had been transmitted to it, the district office had failed to take any steps to resolve the matter despite repeated reminders. The applicant made claims similar to those he had made in 1998.

21. On 28 August 2001 the District Court discontinued the proceedings. It was observed that the applicant's submissions had been aimed at correcting Land Registry records, which was primarily to be done by the Land Registry authorities and, therefore, fell outside the jurisdiction of the ordinary courts.

22. On 28 January 2002 the Regional Court quashed the decision of 28 August 2001 on the applicant's appeal and remitted the matter to the District Court to continue the proceedings. The Regional Court based its decision on the finding of the Supreme Court of 26 April 2001 in connection with the 1998 action and instructed the District Court to examine whether, in the circumstances, it was appropriate to join the two actions.

23. On 21 June 2002 the District Court requested the applicant to provide further and better particulars. He responded on 4 July 2002 and then requested an exemption from the obligation to pay the court fees.

24. On 26 February the District Court granted the applicant a 30% exemption and on 30 June 2003 on the applicant's appeal the Regional Court granted the applicant a full exemption from the court fees.

25. On 12 July 2005 the District Court discontinued the proceedings in so far as the action was directed against the municipal office. The District Court held that the municipal office was a body of the municipality. It had no legal personality of its own and, therefore, could not be a party to court proceedings. This shortcoming could not be corrected, as the applicant had suggested, by "replacing" the municipal office as the defendant by the municipality, because a defendant who did not exist in law could not be replaced by another entity.

26. On 17 August and 31 October 2005, respectively, the District Court and, on the applicant's appeal, the Regional Court declared the applicant's appeal against the decision of 16 July 2005 inadmissible as being out of time.

27. On 29 December 2005 the applicant filed new claims seeking, *inter alia*, an order to close the road in question. On 12 January 2006 the District Court decided to join the applicant's submission to the action of 2000.

28. On 20 February 2006 the District Court requested the applicant to provide further and better particulars and later summoned him for an interview in chambers (*informatívny výsluch*) in order to explore the legal nature of his submissions.

29. On 19 April 2006 the District Court interviewed the applicant and informed him that his submissions could not be dealt with as a civil action since they fell short of formal requirements, in particular because of their vagueness and lack of substance. In response, the applicant made a new written submission on 3 May 2006.

30. In the meantime, the District Court sought information concerning the case from the Drietomá municipality, the land registration authorities and the Trenčín district road traffic authority (*obvodný prúd pre cestnú dopravu a pozemné komunikácie*).

31. The proceedings are still pending.

D. Constitutional complaint of 2003

32. On 8 September 2003 the applicant lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). He argued that there had been unjustified delays in the 1998 and 2000 actions and in the proceedings before the Land Registry authorities, and claimed 200,000 Slovakian korunas¹ (SKK) in compensation for non-pecuniary damage.

33. On 14 January 2004 the Constitutional Court appointed a legal-aid lawyer to assist the applicant.

34. On 7 July 2004 the Constitutional Court declared the part of the complaint concerning the delays in the 1998 and 2000 actions admissible and the remainder inadmissible.

35. On 3 November 2004 the Constitutional Court discontinued the proceedings in so far as the complaint related to the 1998 action. It was observed that the admissibility of this part of the complaint had already been examined (see paragraph 38 below) and that it could not be examined again.

36. On 8 December 2004 the Constitutional Court (Third Section) found that the District Court had violated the applicant's right to a hearing “without unjustified delay” (Article 48 § 2 of the Constitution) and “within a reasonable time” (Article 6 § 1 of the Convention) in the 2000 action. At the same time, it ordered the District Court to proceed with the matter promptly and to pay the applicant his legal costs and SKK 10,000² in respect of non-pecuniary damage.

The Constitutional Court found that the subject matter of the proceedings was not particularly complex and that the applicant had contributed to the length of the proceedings to some extent in that his claim had lacked clarity and that he had failed to discharge his obligation to pay the court fees in time. Delays of more than 17 months were imputable to the District Court. It was observed that the proceedings were still pending, that the courts had not held a single hearing, and that the only issue that had been resolved concerned the court fees.

E. Constitutional complaint of 2004

37. On 11 March 2004, without offering an explanation, the applicant lodged a new constitutional complaint, which was almost identical to his complaint of 8 September 2003.

38. On 31 August 2004, under a different file number, the Constitutional Court declared the complaint admissible in respect of the 2000 action and inadmissible as being manifestly ill-founded in respect of the 1998 action.

¹ SKK 200,000 is equivalent to approximately 5,700 euros (EUR).

² SKK 10,000 is equivalent to approximately EUR 285.

39. On 14 January 2005 the Constitutional Court (Fourth Section) delivered a judgment (*nález*) which was substantially the same as that of 8 December 2004. Making no mention of the judgment of 8 December 2004, the judgment of 14 January 2005 varied slightly in its reasoning and in the amount of the just satisfaction awarded to the applicant, namely SKK 20,000¹.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

40. The applicant complained that the length of the proceedings before the administrative authorities and in his 1998 and 2000 actions had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

1. Contact with the administrative authorities

41. The Government pointed out that the essence of the applicant's communication with the administrative authorities had been his claims for protection of property rights in a dispute. However, at the relevant time, the resolution of any property disputes had been within the exclusive jurisdiction of the ordinary courts, and the administrative authorities had had no decision-making power in this area. The applicant's contact with the administrative authorities therefore had not involved determination of his civil rights and obligations and, as such, had fallen outside the purview of Article 6 § 1 of the Convention.

42. The applicant disagreed and argued that all the claims which he had submitted to the administrative authorities had had a valid basis in law and should have been dealt with in accordance with the procedural requirements of Article 6 § 1 of the Convention.

43. The Court observes that the subject matter of the applicants' claims before the various administrative authorities was the road adjacent to his property, its location and the damage allegedly caused to him in connection

¹ SKK 20,000 is equivalent to approximately EUR 570.

with it (see paragraph 8 above). These claims were contentious and, at the time when they were made, that is to say prior to 1 January 1998, the administrative authorities had no jurisdiction to entertain them (see paragraphs 9 to 11 above). It follows that they could not have produced any results which would have been directly decisive for the applicant's civil rights and obligations within the meaning of Article 6 § 1 of the Convention (see, among many other authorities, *Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997, *Reports of Judgments and Decisions* 1997-IV, p. 43, § 32). The complaint is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. The 1998 Action

44. The Government claimed that the subject matter of the proceedings had been complex in that it had involved determination of the question of jurisdiction over the applicant's claims in a period when the relevant legal framework had been changing. They also submitted that the length of the proceedings had been substantially influenced by the applicant's procedural conduct and that what had been at stake for him had not been of any particular importance for the purposes of Article 6 § 1 of the Convention. Nevertheless, the Government acknowledged that the complaint was not manifestly ill-founded.

45. The applicant reiterated his complaint.

46. The period to be taken into consideration began on 14 January 1998 and ended on 23 March 2004. It thus lasted more than six years. In this period the questions of jurisdiction and court fees but not the merits of the case were examined at two levels of jurisdiction and the former question was also dealt with by the local land registration authority, the district office.

47. The Court notes that the complaint concerning the 1998 action is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

3. The 2000 Action

48. The Government argued that, as a result of the Constitutional Court's judgments of 8 December 2004 and 14 January 2005, the applicant could no longer claim to be a victim for the purposes of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time as regards the period that had already been examined by the Constitutional Court. They pointed out that the Constitutional Court had expressly acknowledged the infringement of the applicant's right and had provided him with preventive and compensatory redress. This redress was adequate and sufficient and it

was compatible with the principles and practice of both the Constitutional Court and the Court. The Government emphasised the promptness with which the Constitutional Court had dealt with the applicant's complaints, submitted that further to the Constitutional Court's injunctions for acceleration of the proceedings there had no longer been any delays and concluded that the complaint was manifestly ill-founded.

49. Nevertheless, as to the substance of the complaint, the Government admitted, with reference to the Constitutional Court's findings of 8 December 2004 and 14 January 2005, that the applicant's right to a hearing within a reasonable time had been violated.

50. The applicant reiterated his complaint and argued that the redress which he had obtained from the Constitutional Court had been inadequate.

51. The Court observes that, in view of the Constitutional Court's judgments of 8 December 2004 and 14 January 2005, the question arises whether the applicant can still claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time.

52. An applicant's status as a victim within the meaning of Article 34 of the Convention depends on whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, among many other authorities, *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-...).

53. In the present case the Constitutional Court expressly found, twice, that the District Court had violated the applicant's right to a hearing within a reasonable time, ordered that the proceedings be accelerated and awarded the applicant, in total, the equivalent of approximately EUR 855 in just satisfaction. Although the double examination of substantially the same problem by the Constitutional Court appears unusual, it is not the specific technical approach to examination of individual complaints which is of crucial importance under the Convention, but the overall compatibility of the protection afforded to applicants at the national level with the protection due under the Convention (see, *mutatis mutandis*, *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005).

54. Whether the redress afforded to the applicant in the present case was adequate and sufficient having regard to Article 41 of the Convention falls to be determined in the light of the principles established under the Court's case-law (see, most recently, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-213, ECHR 2006-..., and *Cocchiarella*, cited above, §§ 69-98). These include, most notably, the amount of the compensation awarded to the applicant and the effectiveness of the preventive measure applied.

55. At the time of the Constitutional Court's second examination of the length of the proceedings in question, on 14 January 2005, they had lasted more than four years without a single decision on the merits. The total amount awarded to the applicant by the Constitutional Court by way of just satisfaction is around 25% of what the Court would generally award in a similar situation in a Slovakian case. Although this amount of just satisfaction is relatively low, of itself this does not necessarily mean that it is incompatible with the Convention principles.

56. After the Constitutional Court's second judgment, the proceedings have continued for more than another two years and seven months without a single decision on the merits and they are still pending today. This raises doubts as to what preventive effect, if any, the Constitutional Court's injunctions actually had in accelerating the proceedings.

57. In view of the relatively low amount of just satisfaction awarded by the Constitutional Court in combination with the ineffectiveness of its injunctions in accelerating the proceedings, the Court finds that the redress obtained by the applicant at the national level cannot be considered adequate and sufficient (see *Scordino (no. 1)*, cited above, §§ 205-06 and 214-15). The applicant can accordingly still claim to be a “victim” of a breach of the “reasonable time” requirement.

58. The period to be taken into consideration began on 26 October 2000 and has not yet ended. It has thus lasted more than six years and ten months. In this period the action has been dealt with at two levels of jurisdiction.

59. The Court notes that the complaint concerning the 2000 action is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

60. The Court is now called upon to determine whether the length of the proceedings in the 1998 action and in the 2000 action complied with the “reasonable time” requirement under Article 6 § 1 of the Convention.

61. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

62. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

63. Having examined all the material submitted to it and having regard to its case-law on the subject as well as the admission by the Government

(see paragraph 49 above), despite the applicant's contribution to the length of the proceedings in question, the Court considers that in the instant case the length of the proceedings in both the 1998 action and the 2000 action was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

65. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage comprising lost profit and other material damage and EUR 25,000 in respect of non-pecuniary damage.

66. The Government contested these claims.

67. In so far as the claim in respect of pecuniary damage has been substantiated, the Court does not discern any causal link between the violation found and the damage alleged. It therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, and having regard to its case-law on the subject (see the recapitulation of the relevant principles and, *mutatis mutandis*, their application in *Scordino (no. 1)*, cited above, §§ 267-272), and taking into account the fact that the applicant has already obtained a measure of just satisfaction under the Constitutional Court's judgments of 8 December 2004 and 14 January 2005, it awards him EUR 6,000 under that head.

B. Costs and expenses

68. The applicant also claimed a lump sum of EUR 2,000 for the costs and expenses incurred before both the domestic courts and before the Court.

69. The Government contested the claim.

70. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 400 under this head.

C. Default interest

71. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings in the 1998 action and in the 2000 action admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of both actions;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 400 (four hundred euros) in respect costs and expenses, the above amounts to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President